



State of Utah

GARY R. HERBERT  
*Governor*

GREG BELL  
*Lieutenant Governor*

Department of  
Environmental Quality

Amanda Smith  
*Executive Director*

DIVISION OF AIR QUALITY  
Bryce C. Bird  
*Director*

DAQ-036-11

**MEMORANDUM**

**TO:** Air Quality Board

**THROUGH:** Bryce Bird, Executive Secretary

**FROM:** Kimberly Kreykes, Environmental Planning Consultant

**DATE:** June 20, 2011

**SUBJECT:** FINAL ADOPTION: Repeal and Reenact R307-103. Administrative Procedures; and Amend: R307-120-8. General Requirements: Tax Exemption for Air Pollution Control Equipment. Appeal and Revocation.

---

On February 2, 2011, the Air Quality Board proposed for public comment, Repeal and Reenact R307-103 and Amend R307-120-8. This proposal was necessitated by a request by the Attorney General's office for the Board to propose a revision to the Department of Environmental Quality's R305-6, Administrative Procedures. The result of these two proposals would be that all administrative procedures for the Division of Air Quality and the Air Quality Board would be administered under the Department's R305-6.

Comments received during the public comment period did not directly address the proposed amendments to R307-103 or R307-120-8. All received comments were on the proposed Department rule, R305-6, thus they were forwarded to Laura Lockhart of the Office of the Attorney General, the contact person for the Department's rule amendments.

In a prior item, the Attorney General's Office asked the Air Quality Board to adopt the proposed changes to the proposed Department Rule R305-6.

Staff Recommendation: Staff recommends that the Board adopt the amendments to R307-103 and R307-120-8 as proposed.

1 **R307. Environmental Quality, Air Quality.**

2 **R307-103. Administrative Procedures.**

3  
4 Administrative proceedings under Utah Air Quality Act are governed  
5 by R305-6.  
6

7  
8 **KEY: air pollution, administrative procedures, hearings**

9 **Date of Enactment or Last Substantive Amendment: 2011**

10 **Notice of Continuation: March 4, 2010**

11 **Authorizing, and Implemented or Interpreted Law: 63G-4**

**Environmental Quality, Air Quality**  
**R307-103**  
**Administrative Procedures**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)

DAR FILE NO.: 34682

FILED: 04/13/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R307-103 sets out procedures for conducting adjudicative proceedings under Title 19, Chapter 2, Utah Air Conservation Act, and governed by Title 63G, Chapter 4, the Utah Administrative Procedures Act. The current Rule R307-103 is in need of updating to accommodate the statutory change requiring appointment of an administrative law judge for many proceedings and to address matters that have come up in the course of past administrative proceedings. The Attorney General's Office decided that rather than each division in the Department of Environmental Quality having its own administrative procedures rule, the department would enact a rule that would apply department-wide. In DAR No. 34472, the Department Executive Director Amanda Smith, the Air Quality Board, the Water Quality Board, the Radiation Control Board, the Drinking Water Board, and Solid and Hazardous Waste Control Board proposed the creation of the department Rule R305-6. To incorporate Rule R305-6 into the Division of Air Quality's rules, Rule R307-103 needs to be amended to reference Rule R305-6 for all administrative procedures. (DAR NOTE: The proposed new Rule R305-6 was published under DAR No. 34472 in the March 15, 2011, issue of the Bulletin.)

**SUMMARY OF THE RULE OR CHANGE:** Rule R307-103 is amended to reference Rule R306-5 for all administrative procedures. All administrative procedures located in Rule R307-103 are located in the new Rule R305-6 with changes. R305-6 makes many changes to the current rule, including changes to encourage informal discovery and to limit discovery to appropriate subjects (proposed Section R305-6-105); changes to require that for decisions to be made by an executive secretary of a board, comments must be provided to the executive secretary in order to preserve a commenter's right to challenge the executive secretary's decision (proposed Section R305-6-209); and changes that specify situations in which declaratory actions should not be considered (proposed Section R305-6-302).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 63G, Chapter 4

**ANTICIPATED COST OR SAVINGS TO:**

- ♦ **THE STATE BUDGET:** No cost or savings is anticipated for state budget as this amendment does not create any new requirements.
- ♦ **LOCAL GOVERNMENTS:** No cost or savings is anticipated for local government as this amendment does not create any new requirements.
- ♦ **SMALL BUSINESSES:** No cost or savings is anticipated for small businesses as this amendment does not create any new requirements.
- ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No cost or savings is anticipated for persons other than small businesses, businesses, or local government entities as this amendment does not create any new requirements.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No cost or savings is anticipated for affected persons as this amendment does not create any new requirements.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No cost or savings is anticipated for businesses as this amendment does not create any new requirements.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ♦ Kimberly Kreykes by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at [kkreykes@utah.gov](mailto:kkreykes@utah.gov)
- ♦ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at [llockhart@utah.gov](mailto:llockhart@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/14/2011**

**AUTHORIZED BY:** Bryce Bird, Acting Director

**R307. Environmental Quality, Air Quality.**

**[R307-103. Administrative Procedures:**

**R307-103-1. Scope of Rule:**

~~(1) This rule R307-103 sets out procedures for conducting adjudicative proceedings under Title 19, Chapter 2, Utah Air Conservation Act, and governed by Title 63G, Chapter 4, the Utah Administrative Procedures Act.~~

(2) The executive secretary may issue initial orders or notices of violation as authorized by the Board. Following the issuance of an initial order or notice of violation under Title 19, Chapter 2, the recipient, or in some situations other persons, may contest that order or notice in a proceeding before the board or before a presiding officer appointed by the board.

(3) Issuance of initial orders and notices of violation are not governed by the Utah Administrative Procedures Act as provided under 63G-4-102(2)(k) and are not governed by R307-103-3 through R307-103-14 of this Rule. Initial orders and notices of violation are further described in R307-103-2(1).

(4) Proceedings to contest an initial order or notice of violation are governed by the Utah Administrative Procedures Act and by this rule R307-103.

(5) The Utah Administrative Procedures Act and this rule R307-103 also govern any other formal adjudicative proceeding before the Air Quality Board.

#### **R307-103-2. Initial Proceedings.**

(1) Initial Proceedings Exempt from Utah Administrative Procedures Act. Initial orders and notices of violation include, but are not limited to, initial proceedings regarding:

(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;

(b) notices of violation and orders associated with notices of violation;

(c) orders to comply and orders to cease and desist;

(d) certification for tank vapor tightness testing under R307-342;

(e) certification of asbestos contractors under R307-801;

(f) fees imposed for major source reviews under R307-414;

(g) assessment of other fees except as provided in R307-103-14(7);

(h) eligibility of pollution control equipment for tax exemptions under R307-120 and R307-121;

(i) requests for variances, exemptions, and other approvals;

(j) requests or approvals for experiments, testing or control plans; and

(k) certification of individuals and firms who perform lead-based paint activities and accreditation of lead-based paint training providers under R307-840.

(2) Effect of Initial Orders and Notices of Violation.

(a) Unless otherwise stated, all initial orders or notices of violation are effective upon issuance. All initial orders or notices of violation shall become final if not contested within 30 days after the date issued.

(b) The date of issuance of an initial order or notice of violation is the date the initial order or notice of violation is mailed.

(c) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review, or judicial appeal.

#### **R307-103-3. Contesting an Initial Order or Notice of Violation.**

(1) Procedure. Initial orders and notices of violation, as described in R307-103-2(1), may be contested by filing a written Request for Agency Action to the Executive Secretary, Air Quality

Board, Division of Air Quality, PO Box 144820, Salt Lake City, Utah 84114-4820.

(2) Content Required and Deadline for Request. Any such request is governed by and shall comply with the requirements of 63G-4-201(3). If a request for agency action is made by a person other than the recipient of an order or notice of violation, the request for agency action shall also specify in writing sufficient facts to allow the board to determine whether the person has standing under R307-103-6(3) to bring the requested action.

(3) A request for agency action made to contest an initial order or notice of violation shall, to be timely, be received for filing within 30 days of the issuance of the initial order or notice of violation.

(4) Stipulation for Extending Time to File Request. The executive secretary and the recipient of an initial order or notice of violation may stipulate to an extension of time for filing the request, or any part thereof.

#### **R307-103-4. Designation of Proceedings as Formal or Informal.**

(1) Contest of an initial order or notice of violation resulting from proceedings described in R307-103-2(1) shall be conducted as a formal proceeding.

(2) The board in accordance with 63G-4-202(3) may convert proceedings which are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

#### **R307-103-5. Notice of and Response to Request for Agency Action.**

(1) The presiding officer shall promptly review a request for agency action and shall issue a Notice of Request for Agency Action in accordance with 63G-4-201(3)(d) and (e). If further proceedings are required and the matter is not set for hearing at the time the Notice is issued, notice of the time and place for a hearing shall be provided promptly after the hearing is scheduled.

(2) The Notice shall include a designation of parties under R307-103-6(4), and shall notify respondents that any response to the Request for Agency Action shall be due within 30 days of the day the Notice is mailed, in accordance with 63G-4-204.

#### **R307-103-6. Parties and Intervention.**

(1) Determination of a Party. The following persons are parties to an adjudicative proceeding:

(a) The person to whom an initial order or notice of violation is directed, such as a person who submitted a permit application that was approved or disapproved by initial order of the executive secretary;

(b) The executive secretary of the board;

(c) All persons to whom the board has granted intervention under R307-103-6(2); and

(d) Any other person with standing who brings a Request for Agency Action as authorized by the Utah Administrative Procedures Act and these rules.

(2) Intervention.

(a) A Petition to Intervene shall meet the requirements of 63G-4-207. Except as provided in (2)(e), the timeliness of a Petition to Intervene shall be determined by the presiding officer under the facts and circumstances of each case.

(b) Any response to a Petition to Intervene shall be filed within 20 days of the date the Petition was filed, except as provided in R307-103-6(2)(c).

(c) A person seeking to intervene in a proceeding for which agency action has not been initiated under 63G-4-201 may file a Request for Agency Action at the same time he files a Petition for Intervention. Any such Request for Agency Action and Petition to Intervene must be received by the board for filing within 30 days of the issuance of the initial order or notice of violation being challenged. The time for filing a Request for Agency Action and Petition to Intervene may be extended by stipulation of the executive secretary, the person subject to an initial order or notice of violation, and the potential intervenor.

(d) Any response to a Petition to Intervene that is filed at the same time as a Request for Agency Action shall be filed on or before the day the response to the Request for Agency Action is due.

(e) A Petition to Intervene shall be granted if the requirements of 63G-4-207(2) are met.

(3) Standing. No person may initiate or intervene in an agency action unless that person has standing. Standing shall be evaluated using applicable Utah case law.

(4) Designation of Parties. The presiding officer shall designate each party as a petitioner or respondent.

(5) Amicus Curiae (Friend of the Court). A person may be permitted by the presiding officer to enter an appearance as amicus curiae (friend of the court), subject to conditions established by the presiding officer.

#### **R307-103-7. Conduct of Proceedings.**

(1) Role of Board.

(a) The board is the "agency head" as that term is used in Title 63G, Chapter 4. The board is also the "presiding officer," as that term is used in Title 63G, Chapter 4, except:

(i) The chair of the board shall be considered the presiding officer to the extent that these rules allow; and

(ii) The board may appoint one or more presiding officers to preside over all or a portion of the proceedings.

(b) The chair of the board may delegate the chair's authority as specified in this rule to another board member.

(2) Appointed Presiding Officers. Unless otherwise explicitly provided by written order, any appointment of a presiding officer shall be for the purpose of conducting all aspects of an adjudicative proceeding, except rulings on intervention, stays of orders, dispositive motions, and issuance of the final order. As used in this rule, the term "presiding officer" shall mean "presiding officers" if more than one presiding officer is appointed by the board.

(3) Board Counsel. The Presiding Officer may request that Board Counsel provide legal advice regarding legal procedures, pending motions, evidentiary matters and other legal issues.

(4) Pre-hearing Conferences. The presiding officer may direct the parties to appear at a specified time and place for pre-hearing conferences for the purposes of establishing schedules, clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, encouraging settlement, or giving the parties notice of the presiding officer's availability to parties.

(5) Pre-hearing Documents.

(a) At least 15 business days before a scheduled hearing, the executive secretary shall compile a draft list of prehearing documents as described in (b), and shall provide the list to all other parties. Each party may propose to add documents to or delete documents from the list. At least seven business days before a scheduled hearing, the executive secretary shall issue a final prehearing document list, which shall include only those documents upon which all parties agree unless otherwise ordered by the presiding officer. All documents on the final prehearing document list shall be made available to the presiding officer prior to the hearing, and shall be deemed to be authenticated.

(b) The prehearing document list shall ordinarily include any pertinent permit application, any pertinent inspection report, any pertinent draft document that was released for public comment, any pertinent public comments received, any pertinent initial order or notice of violation, the request for or notice of agency action, and any responsive pleading. The list is not intended to be an exhaustive list of every document relevant to the proceeding, however any document may be included upon the agreement of all parties.

(6) Briefs.

(a) Unless otherwise directed by the presiding officer, parties to the proceeding shall submit a pre-hearing brief, which shall include a proposed order meeting the requirements of 63G-4-208, at least seven business days before the hearing. The prehearing brief shall be limited to 20 pages exclusive of the proposed order.

(b) Post-hearing briefs and responsive briefs will be allowed only as authorized by the presiding officer.

(7) Schedules.

(a) The parties are encouraged to prepare a joint proposed schedule for discovery, for other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings. If the parties cannot agree on a joint proposed schedule, any party may submit a proposed schedule to the presiding officer for consideration.

(b) The presiding officer shall establish a schedule for the matters described in (a) above.

(8) Motions. All motions shall be filed a minimum of 12 days before a scheduled hearing, unless otherwise directed by the presiding officer. A memorandum in opposition to a motion may be filed within 10 days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the presiding officer.

(9) Filing and Copies of Submissions. The original of any motion, brief, petition for intervention, or other submission shall be filed with the executive secretary. In addition, the submitter shall provide a copy to each presiding officer, to each party of record, and to all persons who have petitioned for intervention, but for whom intervention has been neither granted nor denied.

#### **R307-103-8. Hearings.**

The presiding officer shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements.

#### **R307-103-9. Orders.**

(1) Recommended Orders of Appointed Presiding Officers.

\_\_\_\_\_ (a) Unless an appointed presiding officer is required by the terms of his appointment to issue a final order, he shall prepare a recommended order for the board, and shall provide copies of the recommended order to the board and to all parties.

\_\_\_\_\_ (b) Any party may, within 10 days of the date the recommended order is mailed, delivered, or published, comment on the recommended order. Such comments shall be limited to 15 pages and shall cite to the specific parts of the record which support the comments.

\_\_\_\_\_ (c) The board shall review the recommended order, comments on the recommended order, and those specific parts of the record cited by the parties in any comments. The board shall then determine whether to accept, reject, or modify the recommended order. The board may remand part or all of the matter to the presiding officer or may itself act as presiding officers for further proceedings.

\_\_\_\_\_ (d) The board may modify this procedure with notice to all parties.

\_\_\_\_\_ (2) Final Orders. The board shall issue a final order which shall include the information required by 63G-4-208 or 63G-4-203(1)(i).

#### **R307-103-10. Stays of Orders.**

\_\_\_\_\_ (1) Stay of Orders Pending Administrative Adjudication.

\_\_\_\_\_ (a) A party seeking a stay of a challenged order during an adjudicative proceeding shall file a motion with the board. If granted, a stay would suspend the challenged order for the period as directed by the board.

\_\_\_\_\_ (b) The board may order a stay of the order if the party seeking the stay demonstrates the following:

\_\_\_\_\_ (i) The party seeking the stay will suffer irreparable harm unless the stay is issued;

\_\_\_\_\_ (ii) The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

\_\_\_\_\_ (iii) The stay, if issued, would not be adverse to the public interest; and

\_\_\_\_\_ (iv) There is substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

\_\_\_\_\_ (2) Stay of the Order Pending Judicial Review.

\_\_\_\_\_ (a) A party seeking a stay of the board's final order during the pendency of judicial review shall file a motion with the board.

\_\_\_\_\_ (b) The board as presiding officer may grant a stay of its order during the pendency of judicial review if the standards of R307-103-10(1)(b) are met.

#### **R307-103-11. Reconsideration.**

\_\_\_\_\_ No agency review under 63G-4-301 is available. A party may request reconsideration of an order of the presiding officer as provided in 63G-4-302.

#### **R307-103-12. Disqualification of Board Members or Other Presiding Officers.**

\_\_\_\_\_ (1) Disqualification of Board Members or Other Presiding Officers.

\_\_\_\_\_ (a) A member of the board or other presiding officer shall disqualify himself from performing the functions of the presiding

officer regarding any matter in which he, or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

\_\_\_\_\_ (i) Is a party to the proceeding, or an officer, director, or trustee of a party;

\_\_\_\_\_ (ii) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;

\_\_\_\_\_ (iii) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

\_\_\_\_\_ (iv) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or

\_\_\_\_\_ (v) Is likely to be a material witness in the proceeding.

\_\_\_\_\_ (b) A member of the board or other presiding officer is also subject to disqualification under principles of due process and administrative law.

\_\_\_\_\_ (c) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann. Section 67-16-1 et seq.

\_\_\_\_\_ (2) Motions for Disqualification. A motion for disqualification shall be made first to the presiding officer. If the presiding officer is appointed, any determination of the presiding officer upon a motion for disqualification may be appealed to the board.

#### **R307-103-13. Declaratory Orders.**

\_\_\_\_\_ (1) A request for a declaratory order may be filed in accordance with the provisions of 63G-4-503. The request shall be titled a petition for declaratory order and shall meet the requirements of 63G-4-201(3). The request shall also set out a proposed order.

\_\_\_\_\_ (2) Requests for declaratory order, if set for adjudicative hearing, will be conducted using formal procedures unless converted to an informal proceeding under R307-103-4(2) above.

\_\_\_\_\_ (3) The provisions of 63G-4-202 through 63G-4-302 apply to declaratory proceedings, as do the provisions of this Rule R307-103.

#### **R307-103-14. Miscellaneous.**

\_\_\_\_\_ (1) Modifying Requirements of Rules. For good cause, the requirements of these rules may be modified by order of the presiding officer.

\_\_\_\_\_ (2) Extensions of Time. Except as otherwise provided by statute, the presiding officer may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R307-103-7(6). The presiding officer may also postpone hearings. The chair of the board may act as presiding officer for purposes of this paragraph.

\_\_\_\_\_ (3) Computation of Time. Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure except that no additional time shall be allowed for service by mail.

\_\_\_\_\_ (4) Appearance and Representation.

\_\_\_\_\_ (a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his, her, or its interest in the proceeding.

\_\_\_\_\_ (b) Any participant may be represented by legal counsel.

~~(5) Other Forms of Address. Nothing in these rules shall prevent any person from requesting an opportunity to address the board as a member of the public, rather than as a party. An opportunity to address the board shall be granted at the discretion of the board. Addressing the board in this manner does not constitute a request for agency action under R307-103-3.~~

~~(6) Settlement. A settlement may be through an administrative order or through a proposed judicial consent decree, subject to the agreement of the settlers.~~

~~(7) Requests for Records. Requests for records and related assessments of fees for records under the Title 63G, Chapter 2, Utah Government Record Access and Management Act, and Title 63A, Chapter 12, Archives and Records Service, are not governed by Title 63G, Chapter 4, Utah Administrative Procedures Act, or by this rule.]~~

**R307-103. Administrative Procedures.**

**R307-103-1. Administrative Procedures.**

Administrative proceedings under Utah Air Quality Act are governed by Rule R305-6.

**KEY:** air pollution, administrative procedures, hearings, administrative proceedings

**Date of Enactment or Last Substantive Amendment:** ~~April 12, 2004~~ 2011

**Notice of Continuation:** March 4, 2010

**Authorizing, and Implemented or Interpreted Law:** 63G-4

## Environmental Quality, Air Quality **R307-120-8** Appeal and Revocation

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 34689

FILED: 04/14/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The administrative procedures for the Division of Air Quality located in Rule R307-103 is undergoing a revision. Section R307-120-8 currently references Section R307-103-3. When the revision of Rule R307-103 become effective the reference in Section R307-120-8 will no longer be valid. This proposed rule amendment removes the "-3" from the reference and leaves the reference to Rule R307-103 as a general location to find the necessary information required by Section R307-120-8.

**SUMMARY OF THE RULE OR CHANGE:** This amendment changes the reference of "R307-103-3" to "R307-103" located in Subsection R307-120-8(1).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-123 and Section 19-2-124 and Section 19-2-125 and Section 19-2-126 and Section 19-2-127

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** No cost or savings is anticipated for state budget as this amendment does not create any new requirements.

♦ **LOCAL GOVERNMENTS:** No cost or savings is anticipated for local government as this amendment does not create any new requirements.

♦ **SMALL BUSINESSES:** No cost or savings is anticipated for small businesses as this amendment does not create any new requirements.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No cost or savings is anticipated for persons other than small businesses, businesses, or local government entities as this amendment does not create any new requirements.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No cost or savings is anticipated for affected persons as this amendment does not create any new requirements.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No cost or savings is anticipated for businesses as this amendment does not create any new requirements.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Kimberly Kreykes by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at [kkreykes@utah.gov](mailto:kkreykes@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011**

**THIS RULE MAY BECOME EFFECTIVE ON:** 08/14/2011

**AUTHORIZED BY:** Bryce Bird, Acting Director

**R307. Environmental Quality, Air Quality.**

**R307-120. General Requirements: Tax Exemption for Air Pollution Control Equipment.**

**R307-120-8. Appeal and Revocation.**

(1) A decision of the executive secretary of the Board may be reviewed by filing a Request for Agency Action as provided in R307-103[-3].

(2) Revocation of prior certification shall be made for any of the circumstances prescribed in Section 19-2-126, after consultation with the State Tax Commission.

**KEY:** air pollution, tax exemptions, equipment

**Date of Enactment or Last Substantive Amendment:** ~~March 9, 2007~~ 2011

**Notice of Continuation:** March 15, 2007

**Authorizing, and Implemented or Interpreted Law:** 19-2-123; 19-2-124; 19-2-125; 19-2-126; 19-2-127

## Environmental Quality, Air Quality **R307-204** Emission Standards: Smoke Management

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34559

FILED: 04/07/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The rule was adopted by the Air Quality Board (AQB) in November 2003 and submitted to EPA as part of the Regional Haze SIP in December 2003. Amendments to Rule R307-204 were adopted by the AQB in April 2006, and submitted to EPA in May 2006. As part of a consent decree, EPA is required to take final action on both submittals by 12/30/2011. As part of EPA's review to meet the consent decree date, they identified a typographical error in the rule. DAQ staff and the Utah Smoke Management Coordinator confirmed the error and further identified an additional error, as well as redundant language that could be eliminated/removed. The amendment corrects the errors, removes redundant language and provides additional clarifying language.

**SUMMARY OF THE RULE OR CHANGE:** The changes correct typographical errors, remove redundant language, and provide additional clarifying language.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 19-2-104(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The rule is designed for federal agency fire experts who have detailed knowledge of the rule and have implemented the rule correctly even with the presence of these errors. There will be no change to implementation.

♦ **LOCAL GOVERNMENTS:** This rule is designed for federal fire management personnel.

♦ **SMALL BUSINESSES:** This rule is designed for federal fire management personnel.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule is designed for federal fire management personnel.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No additional cost, changes are corrections and clarifications.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No additional cost, changes are corrections and clarifications.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

ENVIRONMENTAL QUALITY

AIR QUALITY

FOURTH FLOOR

195 N 1950 W

SALT LAKE CITY, UT 84116-3085

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Joel Karmazyn by phone at 801-536-4423, by FAX at 801-536-4099, or by Internet E-mail at [jkarmazyn@utah.gov](mailto:jkarmazyn@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011**

**THIS RULE MAY BECOME EFFECTIVE ON:** 07/06/2011

**AUTHORIZED BY:** Bryce Bird, Acting Director

**R307. Environmental Quality, Air Quality.**

**R307-204. Emission Standards: Smoke Management.**

**R307-204-3. Definitions.**

The following additional definitions apply only to R307-204.

"Annual Emissions Goal" means the annual establishment of a planned quantitative value of emissions reductions from prescribed fire.

"Best Management Practices" means smoke management and dispersion techniques used during a prescribed fire or a wildland fire use event that affect the direction, duration, height or density of smoke.

"Burn Plan" means the plan ~~[required for each fire ignited by managers or allowed to burn]~~ required for each fire application ignited by managers. It must be prepared by qualified personnel and approved by the appropriate agency administrator prior to implementation. Each plan follows specific agency direction and must include critical elements described in agency manuals.

"Burn Window" means the period of time during which the prescribed fire is scheduled for ignition.